

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
December 12, 2003 (2:00 p.m.)**

The Board for Contractors convened in Newport News, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert M. Kirby, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Zahn Hall & Zahn Ltd. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case
Lic=Licensing Application
RF=Recovery Fund Claim
Trades=Tradesmen Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney

Participants

Specialty Mechanical Company LLC
File Number 2003-02079 (Disc)

Joseph Kaestner – R Atty
Thomas Herring, Mgr. - R
Paul Constantin, Sr. - C

Specialty Mechanical Company LLC
File Number 2003-02352 (Disc)

Joseph Kaestner – R Atty.
Thomas Herring, Mgr. - R
Paul Constantin, Sr. - C

Larry Hix
File Number 2003-00054 (Disc.)

Jesse P. Hewitt - C

The meeting adjourned at 2:50 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

In Re:

Specialty Mechanical Company LLC

File Number 2003-02079
License Number 2705059342

CONSENT ORDER

Respondent Specialty Mechanical Company LLC ("Specialty Mechanical Company LLC") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705059342).

As a result of this status, Specialty Mechanical Company LLC recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on December 12, 2003 in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended. This IFF was held in Newport News, Virginia and was attended by Thomas Herring, Manager/Respondent; Joseph Kaestner, Respondent's Attorney; and Jennifer Kazzie, Staff Member. Board Member Robert M. Kirby presided at the IFF.

The Board's duly designated representative has found sufficient evidence to believe that:

1. On February 4, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Susan T. Ferguson (Ferguson) regarding criminal convictions involving Thomas A. Herring (Herring) of Specialty Mechanical Company LLC (Specialty).
2. On February 21, 2003, a review of the licensing records of the Board for Contractors revealed Specialty was issued Class A Contractor's license number 2705059342 on November 3, 2000. The records further revealed Herring was a Qualified Individual and member of Responsible Management, as a Manager, for license number 2705059342.
3. On October 25, 2000, Specialty submitted a license application to the Board for Contractors for a Class A license as a limited liability corporation. The license application indicated Herring was the Designated Employee, Qualified Individual, and Responsible Management for Specialty. The license application was signed by Herring.
4. On the license application, Specialty answered "NO" to the following question: "Has your business, Designated Employee, Qualified Individual(s), or Responsible Management been convicted in any jurisdiction of any felony?" Herring certified the statements and answers were true.
5. On January 21, 1977, in the Circuit Court of the City of Richmond, Herring pleaded guilty to and was found guilty of forgery and uttering, a felony, in violation of § 18.2-172 of the Code of Virginia. Imposition of sentence was suspended during Herring's good behavior for ten years. Herring was placed on supervised probation, order to pay restitution and costs.
6. On or about July 15, 1998, in the Circuit Court for St. Mary's County, Maryland, Herring pleaded guilty to and was found guilty of bad check, a misdemeanor.

The Board and Specialty Mechanical Company LLC, as evidenced by the signatures affixed below, enter into this Consent Order. Specialty Mechanical Company LLC knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, Specialty Mechanical Company LLC acknowledges an understanding of the charges. Specialty Mechanical Company LLC hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

Count 1: 18 VAC 50-22-260(B)(2) (Effective May 1, 1999)

Specialty's failure to supply accurate or complete information to the board in obtaining a license is a violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(2). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

The above monetary penalties, costs or sanctions are to be paid/performed within thirty days of the effective date of this consent order. Specialty Mechanical Company LLC acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Specialty Mechanical Company LLC will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Specialty Mechanical Company LLC acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Specialty Mechanical Company LLC's license until such time as there is compliance with all terms of this Order. Specialty Mechanical Company LLC understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Specialty Mechanical Company LLC

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2003.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2003.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of the Records

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS

In Re:

Specialty Mechanical Company LLC, t/a Specialty Mechanical Company LLC
Richmond, VA 23235

File Number 2003-02352
License Number 2705059342

CONSENT ORDER

Respondent Specialty Mechanical Company LLC, t/a Specialty Mechanical Company LLC ("Specialty Mechanical Company LLC") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705059342).

As a result of this status, Specialty Mechanical Company LLC recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on December 12, 2003 in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended. This IFF was held in Newport News, Virginia and was attended by Thomas Herring, Manager/Respondent; Joseph Kaestner, Respondent's Attorney, Paul Constantin Sr., Complainant; and Jennifer Kazzie, Staff Member. Board Member Robert M. Kirby presided at the IFF.

The Board's duly designated representative has found sufficient evidence to believe that:

1. On February 18, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Paul Constantin Sr. (Constantin), Vice President of Paul's Mechanical Services Inc., regarding work performed by Specialty Mechanical Company LLC (Specialty).

2. On February 21, 2003, a review of the licensing records of the Board for Contractors revealed Specialty was issued Class A Contractor's license number 2705059342 on November 3, 2000, with the building contractors (BLD), HVAC contractors (HVA) and plumbing contractors (PLB) classifications, and the concrete contracting (CEM), gas fitting contracting (GFC), and refrigeration contracting (REF) specialties. The records further revealed Thomas A. Herring (Herring) was a Qualified Individual and member of Responsible Management, as a Manager, for license number 2705059342.

3. On September 2, 2003, a review of the licensing records of the Board for Contractors revealed Specialty added the electrical contractors (ELE) classification and William J. Doran (Doran) as the Qualified Individual for this classification on April 2, 2003.

4. On or about January 29, 2002, Specialty completed work performed in accordance with Job Work Order 006485 for All-U-Need Automotive at Midlothian Turnpike, Richmond, Virginia. According to the Job Work Order, Specialty installed and wired four 8' two tube strip light fixtures, replaced a 250 watt MTT Lamp on outside light fixture, and repaired a loose wire connection in an existing 8 foot light fixture located in the office for a total cost of \$908.59.

5. On or about March 1, 2002, Specialty completed work performed in accordance with Job Work Order 006455 for Rent-A-Center at 5244 Chamberlayne Avenue, Richmond, Virginia. According to the Job Work Order, Specialty installed three 8 foot 120V florescence light fixtures and removed three existing light fixtures for a total cost of \$549.91.

6. On or about September 8, 2003, Thomas A. Herring, the Responsible Management of Specialty, told Investigator E. Nathan Matthews, the Board's agent, that the electrical work described in Job Work Orders 006485 and 006455 was performed by Kane Jones, an employee of Specialty and a master electrician.

7. Specialty performed the electrical repairs described in Job Work Orders 006485 and 006455 without an electrical classification on their contractor's license.

The Board and Specialty Mechanical Company LLC, as evidenced by the signatures affixed below, enter into this Consent Order. Specialty Mechanical Company LLC knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, Specialty Mechanical Company LLC acknowledges an understanding of the charges. Specialty Mechanical Company LLC hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

Count 1: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Actions by Specialty of practicing in a classification or specialty service for which the contractor is not licensed is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

The Board waives the imposition of \$1,500.00 of the monetary penalty if a member of Responsible Management successfully completes the Basic Contractor Licensing (remedial education) within six months of the effective date of this Order.

The above monetary penalties, costs or sanctions are to be paid/performed within thirty days of the effective date of this consent order. Specialty Mechanical Company LLC acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Specialty Mechanical Company LLC will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Specialty Mechanical Company LLC acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Specialty Mechanical Company LLC's license until such time as there is compliance with all terms of this Order. Specialty Mechanical Company LLC understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Specialty Mechanical Company LLC
t/a Specialty Mechanical Company LLC

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2003.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2003.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of the Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: LARRY HIX, T/A LARRY HIX
LICENSE NUMBER 2705-032322**

FILE NUMBER: 2003-00054

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 12, 2003, in Newport News, Virginia, by the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Larry Hix, t/a Larry Hix, on April 18, 2003, and by reschedule letters on May 21, 2003 and November 5, 2003. The following individuals participated at the conference: Jesse P. Hewitt, Complainant; Jennifer Kazzie, Staff Member; and Robert M. Kirby, presiding Board Member.

The IFF Conference was previously scheduled for May 13, 2003 and June 23, 2003. Each of these was rescheduled per Larry Hix's request.

Summation of Facts

1. On or about November 23, 2001, Jesse P. Hewitt (Hewitt) entered into a verbal contract with Larry Hix (Hix), in the amount of \$875.00, to provide labor and materials to connect a heating and air conditioning unit to a garage at 10 Huber Road, Newport News, Virginia.
2. On November 23, 2001, Hewitt paid Hix \$300.00 as a deposit. A short time later (specific date unknown), Hix purchased and delivered filters and duct work materials for the project.
3. Hix failed to provide Hewitt with a fully executed copy of the contract, signed by all parties, prior to commencement of work.
4. On January 15, 2002, Hewitt paid Hix an additional \$500.00, under the condition that Hix would complete the work as agreed.
5. On or about August 12, 2002, Hix told Investigator Shelby Smith-Hill, the Board's Agent, that he would begin the work on Wednesday, August 14, 2002, and would complete the work by Thursday, August 15, 2002. Hix agreed to contact the Board's Agent by Friday,

August 16, 2002, to provide an update on the work completed. As of September 13, 2002, Hix failed to return to perform any additional work as promised.

6. Between January 2002 and August 2002, Hewitt requested Hix honor the contractual agreement or return the money paid, less the cost of materials purchased by Hix.

7. Hix failed to return to perform any additional work as promised or refund Hewitt money received for work not performed.

8. On July 22, 2002, Investigator Shelby Smith-Hill, the Board's Agent, made a written request to Hix at his address of record of 1336 76th Street, Apartment #173, Newport News, Virginia 23607, and the address located on the complaint form dated July 9, 2002, of 1336 76th Street, Apartment #151, Newport News, Virginia 23607, requesting a written response and any supporting documentation to the complaint filed with the Board by Hewitt. The Board's Agent requested the written response be received by August 7, 2002. As of September 13, 2002, Hix failed to respond to the Board's Agent's request. The letters were not returned to the Board's Agent.

9. On or about August 8, 2002, the Board's Agent contacted Hix by telephone at (757) 265-7187 to inquire about a written response. Hix told the Board's Agent that he would mail a written response on August 9, 2002. As of September 13, 2002, Hix failed to respond to the Board's Agent's request.

10. On or about August 12, 2002, the Board's Agent contacted Hix by telephone at (757) 265-7187 to inquire about his written response. Hix told the Board's Agent that he would begin the work on Wednesday, August 14, 2002, and would complete the work by Thursday, August 15, 2002. Hix agreed to contact the Board's Agent by Friday, August 16, 2002, to provide an update on the work completed. As of September 13, 2002, the Board's Agent has not received a response.

11. During the IFF, Mr. Hewitt stated that the facts as outline in paragraphs 1, 2, 3, 4, 6, and 7 above are correct.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(10) (Effective September 1, 2001)

Hix's failure to provide Hewitt with a fully executed copy of the contract, signed by all parties, prior to commencement of work is a violation of Board's 2001 Regulation 18 VAC 50-22-260(B)(10). Therefore, I recommend a monetary penalty of \$350.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Hix's failure to return to perform any additional work as promised is a violation of Board's 2001 Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Hix's failure to refund Hewitt money received for work not performed is a violation of Board's 2001 Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 4: 18 VAC 50-22-260(B)(12) (Effective September 1, 2001)

Hix's refusal or failure, upon request, to produce documentation to the Board is a violation of Board's 2001 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-032322 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

DRAFT